

Chapter 40. Selection and Ranking Criteria for Hazardous Waste Sites Requiring Remedial Action**§67400. Applicability.**

NOTE: Authority cited: Section 208, Health and Safety Code. Reference: Sections 25159 and 25159.5, Health and Safety Code.

HISTORY

1. New Article 29 (Sections 67400—67424, not consecutive) filed 1—3—85; effective thirtieth day thereafter (Register 85, No. 2).
2. Repealer filed 5—24—91; effective 7—1—91 (Register, 91, No. 22).

§67400.1. Selection Criteria.

Candidate sites shall be selected for hazardous waste site ranking if:

- (a) the site is presently not owned by the Federal Government; and
- (b) the release or threatened release of a hazardous substance (as defined in Health and Safety Code section 25316) at the site has been confirmed by the Department by means of on-site sampling conducted by the Department or other parties of the waste, soils, sediments, ground water, surface water or air.

NOTE: Authority cited: Section 25356(a), Health and Safety Code. Reference: Section 25356(a), Health and Safety Code.

HISTORY

1. New section filed 5—24—91; operative 7—1—91 (Register 91, No. 22).

§67400.2. Site Ranking Criteria.

Hazardous waste sites shall be ranked for remedial action according to the "Uncontrolled Hazardous Waste Site Ranking System, A User's Manual" (1982) MTR--82W111, except that the "Hazardous Chemicals Data" NFPA 49-1975 as contained in either the 1977 or 1984 edition of the "Fire Protection Guide on Hazardous Materials" published by the National Fire Protection Association may be used instead of the National Fire Protection Association's National Fire Codes, Vol. 13, No. 49 (1977).

NOTE: Authority cited: Section 25356(a), Health and Safety Code. Reference: Section 25356(a), Health and Safety Code.

HISTORY

1. New section filed 5—24—91; operative 7—1—91, (Register 91, No. 22).

§67401. Definitions.

NOTE: Authority cited: Sections 208 and 25150, Stats. 1994, c. 435 (S.B. 923), Section 3, Health and Safety Code. Reference: Sections 208 and 25150, Stats. 1994, c. 435 (S.B. 923), Section 3, Health and Safety Code.

HISTORY

1. Repealer filed 5—24—91; effective 7—1—91 (Register 91, No. 22).
2. New section filed 6—30—95 as an emergency; operative 6—30—95 (Register 95, No. 26). A Certificate of Compliance must be transmitted to OAL by 12—27—95 or emergency language will be repealed by operation of law on the following day.
3. New section refiled 12—26—95 as an emergency; operative 12—26—95 (Register 95, No. 52). A Certificate of Compliance must be transmitted to OAL by 4—24—96 or emergency language will be repealed by operation of law on the following day.
4. New section refiled 4—24—96 as an emergency; operative 4—24—96 (Register 96, No. 17). A Certificate of Compliance must be transmitted to OAL by 8—22—96 or emergency language will be repealed by operation of law on the following day.
5. Repealed by operation of Government Code section 11346.1(g) (Register 96, No. 35).
6. New section filed 8—26—96 as an emergency; operative 8—26—96 (Register 96, No. 35). A Certificate of Compliance must be transmitted to OAL by 12—24—96 or emergency language will be repealed by operation of law on the following day.
7. Repealer filed 12—10—96; operative 12—10—96; operative 12—10—96 (Register 96, No. 50).

§67401.1. Definitions.

(a) When used in this article, unless otherwise defined in Health and Safety Code (H&SC) Section 25396, the following terms have the meanings given below:

(1) "Community benefit" means an equitable factor that will be used in conjunction with other equitable factors listed in H&SC Section 25398.8 that DTSC shall consider when conducting its apportionment of liability. Community benefit may consider protection of public health and the benefit to the environment that may be realized by members of the public and the affected community by implementation of the response action.

(2) "Department" means the Department of Toxic Substances Control.

(3) "Expedited Remedial Action Program" means the program that was created pursuant to H&SC Section 25396 et seq. of the Expedited Remedial Action Reform Act of 1994.

(4) "Fiscal Year" is the period of the year beginning July 1 and ending the following calendar year on June 30.

(5) "National Priorities List" means the list, compiled by the United States Environmental Protection Agency pursuant to the Comprehensive Environmental Response, Compensation, Liability Act of 1980 (42 U.S.C. Section 9605), of uncontrolled hazardous releases in the United States that are priorities for long-term remedial evaluation and response.

NOTE: Authority cited: Stats. 1994, c. 435 (S.B. 923), Section 3. Reference: Section 25396, Health and Safety Code.

HISTORY

1. New section filed 6—30—95 as an emergency; operative 6—30—95 (Register 95, No. 26). A Certificate of Compliance must be transmitted to OAL by 12—27—95 or emergency language will be repealed by operation of law on the following day.
2. New section refiled 12—26—95 as an emergency; operative 12—26—95 (Register 95, No. 52). A Certificate of Compliance must be transmitted to OAL by 4—24—96 or emergency language will be repealed by operation of law on the following day.
3. New section refiled 4—24—96 as an emergency; operative 4—24—96 (Register 96, No. 17). A Certificate of Compliance must be transmitted to OAL by 8—22—96 or emergency language will be repealed by operation of law on the following day.
4. Repealed by operation of Government Code section 11346.1(g) (Register 96, No. 35).
5. New section filed 8—26—96 as an emergency; operative 8—26—96 (Register 96, No. 35). A Certificate of Compliance must be transmitted to OAL by 12—24—96 or emergency language will be repealed by operation of law on the following day.
6. Certificate of Compliance as to 8—26—96 order, including repealer and new section, transmitted to OAL 10—30—96 and filed 12—10—96 (Register 96, No. 50).

§67401.2. Response Costs.

(a) Response costs are all costs described in subdivision (t) of H&SC Section 25396 including, but not limited to:

- (1) The cost of preparing and reviewing a Preliminary Endangerment Assessment (PEA) including, but not limited to, the cost of collecting, reviewing, and analyzing data or any activities necessary to complete the PEA.
- (2) Costs associated with the Department's preparation of a recommendation to the Site Designation Committee pursuant to subdivision (b) of H&SC Section 25396.5.

(b) Response costs do not include:

- (1) Fees and costs incurred by any responsible person associated with an arbitration or litigation.
- (2) Fees and costs not directly related to and necessary to perform a response action.

(c) Subdivision (t) of H&SC Section 25396 shall not limit the Department's ability to recover past costs under Chapter 6.8 of the Health and Safety Code.

NOTE: Authority cited: Stats. 1994, c. 435 (S.B. 923), Section 3. Reference: Section 25396(t), Health and Safety Code.

HISTORY

1. New section filed 6—30—95 as an emergency; operative 6—30—95 (Register 95, No. 26). A Certificate of Compliance must be transmitted to OAL by 12—27—95 or emergency language will be repealed by operation of law on the following day.
2. New section, including amendment of subsection (b), refiled 12—26—95 as an emergency; operative 12—26—95 (Register 95, No. 52). A Certificate of Compliance must be transmitted to OAL by 4—24—96 or emergency language will be repealed by operation of law on the following day.
3. New section refiled 4—24—96 as an emergency; operative 4—24—96 (Register 96, No. 17). A Certificate of Compliance must be transmitted to OAL by 8—22—96 or emergency language will be repealed by operation of law on the following day.
4. Repealed by operation of Government Code section 11346.1(g) (Register 96, No. 35).
5. New section filed 8—26—96 as an emergency; operative 8—26—96 (Register 96, No. 35). A Certificate of Compliance must be transmitted to OAL by 12—24—96 or emergency language will be repealed by operation of law on the following day.
6. Certificate of Compliance as to 8—26—96 order, including repealer and new section, transmitted to OAL 10—30—96 and filed 12—10—96 (Register 96, No. 50).

§67401.3. Requirements for a Completed Preliminary Endangerment Assessment.

(a) In making its recommendation to the Site Designation Committee pursuant to Health and Safety Code section 25396.5, the Department shall consider the condition set forth in H&SC section 25396.6(b) to be satisfied if the responsible person or persons requesting selection of the site have submitted documents that the Department determines constitute a completed Preliminary Endangerment Assessment (PEA) and the PEA:

- (1) provides sufficient information for the Department to determine that current or past waste management practices have resulted in the release or a threatened release of hazardous substances which pose a threat to public health or the environment; and
- (2) provides sufficient information for the Department to conclude that significant response actions are necessary at the site; and
- (3) includes an analysis of the scope and identity of the affected community.

NOTE: Authority cited: Stats. 1994, c. 435 (S.B. 923), Section 3. Reference: Sections 25319.5 and 25396.6(b), Health and Safety Code.

HISTORY

1. New section filed 6—30—95 as an emergency; operative 6—30—95 (Register 95, No. 26). A Certificate of Compliance must be transmitted to OAL by 12—27—95 or emergency language will be repealed by operation of law on the following day.
2. New section refiled 12—26—95 as an emergency; operative 12—26—95 (Register 95, No. 52). A Certificate of Compliance must be transmitted to OAL by 4—24—96 or emergency language will be repealed by operation of law on the following day.
3. New section refiled 4—24—96 as an emergency; operative 4—24—96 (Register 96, No. 17). A Certificate of Compliance must be transmitted to OAL by 8—22—96 or emergency language will be repealed by operation of law on the following day.
4. Repealed by operation of Government Code section 11346.1(g) (Register 96, No. 35).
5. New section filed 8—26—96 as an emergency; operative 8—26—96 (Register 96, No. 35). A Certificate of Compliance must be transmitted to OAL by 12—24—96 or emergency language will be repealed by operation of law on the following day.
6. Certificate of Compliance as to 8—26—96 order, including repealer and new section transmitted to OAL 10—30—96 and filed 12—10—96 (Register 96, No. 50).

§67401.4. Site Eligibility for the National Priorities List (NPL).

The Department may not recommend that a site be selected for remediation pursuant to the Expedited Remedial Action Program if the site is proposed to be listed or is listed on the National Priorities List pursuant to the procedures specified in 40 Code of Federal Regulations, Part 300.425.

NOTE: Authority cited: Stats. 1994, c. 435 (S.B. 923), Section 3. Reference: Section 25396.6(c)(1), Health and Safety Code.

HISTORY

1. New section filed 6—30—96 as an emergency; operative 6—30—95 (Register 95, No. 26). A Certificate of Compliance must be transmitted to OAL by 12—27—95 or emergency language will be repealed by operation of law on the following day.
2. New section refiled 12—26—95 as an emergency; operative 12—26—95 (Register 95, No. 52). A Certificate of Compliance must be transmitted to OAL by 4—24—96 or emergency language will be repealed by operation of law on the following day.
3. New section refiled 4—24—96 as an emergency; operative 4—24—96 (Register 96, No. 17). A Certificate of Compliance must be transmitted to OAL by 8—22—96 or emergency language will be repealed by operation of law on the following day.
4. Repealed by operation of Government Code section 11346.1(g) (Register 96, No. 35).
5. New section filed 8—26—96 as an emergency; operative 8—26—96 (Register 96, No. 35). A Certificate of Compliance must be transmitted to OAL by 12—24—96 or emergency language will be repealed by operation of law on the following day.
6. Certificate of Compliance as to 8—26—96 order, including repealer and new section, transmitted to OAL 10—30—96 and filed 12—10—96 (Register 96, No. 50).

§67401.5. Termination of Agreements and Site Stabilization.

(a) In the event that a responsible person who has entered into an enforceable agreement with the Department pursuant to H&SC Section 25398.2(b)(1) fails to comply with the agreement, the Department may terminate the agreement and remove the site from eligibility for response actions pursuant to the Expedited Remedial Action Program, and may direct that any further response actions at that site be taken pursuant to Chapter 6.8, Division 20, of the H&SC, unless one or more of any other responsible person agree to assume the noncomplying responsible person's responsibilities under the agreement.

(b) A responsible person who has entered into an enforceable agreement with the Department and who fails to comply with the agreement, shall take any action necessary to stabilize the site in order to protect public health and the environment, unless one or more of any responsible persons agree to assume the noncomplying responsible person's responsibilities the site under the agreement. Actions which are necessary to stabilize the site include, but are not limited to, the following:

(1) Action to preclude the possibility that the public can come in direct contact with hazardous substances either through ingestion, dermal absorption, or inhalation.

(2) Actions to prevent offsite migration of hazardous substances.

(c) Site stabilization activities shall be maintained by the responsible person to ensure protection of public health and the environment until the response action is complete.

NOTE: Authority cited: Stats. 1994, c. 435 (S.B. 923), Section 3. Reference: Sections 25393.8(a) and 25398.2(b)(1)(D), Health and Safety Code.

HISTORY

1. New section filed 6—30—95 as an emergency; operative 6—30—95 (Register 95, No. 26). A Certificate of

Compliance must be transmitted to OAL by 12—27—95 or emergency language will be repealed by operation of law on the following day.

2. New section refiled 12—26—95 as an emergency; operative 12—26—95 (Register 95, No. 52). A Certificate of Compliance must be transmitted to OAL by 4—24—96 or emergency language will be repealed by operation of law on the following day.

3. New section refiled 4—24—96 as an emergency; operative 4—24—96 (Register 96, No. 17). A Certificate of Compliance must be transmitted to OAL by 8—22—96 or emergency language will be repealed by operation of law on the following day.

4. Repealed by operation of Government Code section 11346.1(g) (Register 96, No. 35).

5. New section filed 8—26—96 as an emergency; operative 8—26—96 (Register 96, No. 35). A Certificate of Compliance must be transmitted to OAL by 12—24—96 or emergency language will be repealed by operation of law on the following day.

6. Certificate of Compliance as to 8—26—96 order including repealer and new section, transmitted to OAL 10—30—96 and filed 12—10—96 (Register 96, No. 50).

§67401.6. Financial Assurance.

(a) Any agreement entered into pursuant to H&SC Section 25398.2 shall require a responsible person to demonstrate to the Department the availability of adequate forms of financial assurance for response costs that will or may be assigned to the orphan share.

(b) Any responsible person who must comply with operation and maintenance requirements as part of a response action must demonstrate the availability of adequate forms of financial assurance prior to issuance of a certificate of completion.

(c) For the purposes of complying with subdivisions (a) or (b) of this section, the responsible person shall choose from one or more of the following options as specified below.

(1) Establish a trust fund as described in Section 66265.143(a).

(2) Obtain a surety bond as described in Section 66265.143(b).

(3) Obtain a letter of credit as described in Section 66265.143(c).

(4) Obtain insurance as described in Section 66265.143(d).

(5) Submit to the financial test and corporate guarantee as described in Section 66265.143(e).

(6) Or any other form of financial assurance deemed acceptable by the Department.

NOTE: Authority cited: Stats. 1994, c. 435 (S.B. 923), Section 3. Reference: Sections 25396.6(c)(2) and 25398.2(b)(1)(B), Health and Safety Code.

HISTORY

1. New section filed 6—30—95 as an emergency; operative 6—30—95 (Register 95, No. 26). A Certificate of Compliance must be transmitted to OAL by 12—27—95 or emergency language will be repealed by operation of law on the following day.

2. New section refiled 12—26—95 as an emergency; operative 12—26—95 (Register 95, No. 52). A Certificate of Compliance must be transmitted to OAL by 4—24—96 or emergency language will be repealed by operation of law on the following day.

3. New section refiled 4—24—96 as an emergency; operative 4—24—96 (Register 96, No. 17). A Certificate of Compliance must be transmitted to OAL by 8—22—96 or emergency language will be repealed by operation of law on the following day.

4. Repealed by operation of Government Code section 11346.1(g) (Register 96, No. 35).

5. New section filed 8—26—96 as an emergency; operative 8—26—96 (Register 96, No. 35). A Certificate of Compliance must be transmitted to OAL by 12—24—96 or emergency language will be repealed by operation of law on the following day.

6. Certificate of Compliance as to 8—26—96 order, including repealer and new section, transmitted to OAL 10—30—96 and filed 12—10—96 (Register 96, No. 50).

§67401.7. Information Gathering and Access.

(a) The Department may require any person identified to furnish and provide access to, upon reasonable notice, information or documents relating to the following matters:

(1) The identification, nature, and quantity of materials which have been, or are, generated, treated, stored, or disposed of at a site or which have been, or are, transported to a site.

(2) The nature or extent of a release or threatened release of a hazardous substance at or from a site.

(3) The identification of any person who may be responsible or have knowledge relating to a release or threatened release of a hazardous substance.

(b) The Department may require any responsible person to furnish, upon reasonable notice, information or documents relating to the following matter:

(1) Ability of a person to pay for or to perform a response action.

NOTE: Authority cited: Stats. 1994, c. 435 (S.B. 923), Section 3. Reference: Sections 25185.6, 25358.1, 25398(b)(1) and 25398.9(c), Health and Safety Code.

HISTORY

1. New section filed 6—30—95 as an emergency; operative 6—30—95 (Register 95, No. 26). A Certificate of

Compliance must be transmitted to OAL by 12—27—95 or emergency language will be repealed by operation of law on the following day.

2. New section refiled 12—26—95 as an emergency; operative 12—26—95 (Register 95, No. 52). A Certificate of Compliance must be transmitted to OAL by 4—24—96 or emergency language will be repealed by operation of law on the following day.

3. New section refiled 4—24—96 as an emergency; operative 4—24—96 (Register 96, No. 17). A Certificate of Compliance must be transmitted to OAL by 8—22—96 or emergency language will be repealed by operation of law on the following day.

4. Repealed by operation of Government Code section 11346.1(g) (Register 96, No. 35).

5. New section filed 8—26—96 as an emergency; operative 8—26—96 (Register 96, No. 35). A Certificate of Compliance must be transmitted to OAL by 12—24—96 or emergency language will be repealed by operation of law on the following day.

6. Certificate of Compliance as to 8—26—96 order, including repealer and new section, transmitted to OAL 10—30—96 and filed 12—10—96 (Register 96, No. 50).

§67401.8. Engineering Design.

(a) Pursuant to H&SC Section 25398.14, upon completion of an engineering design to implement an approved remedial action plan, the responsible person for the site shall submit the engineering design to the Department for approval. The Department shall approve, modify, request information, or deny in writing the engineering design within 60 days from the date of receipt.

(b) The Department shall approve an engineering design if the Department determines that the engineering design is consistent with the selected remedial alternative outlined in the approved Remedial Action Plan (RAP). If the engineering design is consistent with the technical and operational plans in the approved RAP and there is compliance with all federal, state, and local statutes, regulations, and ordinances then the Department will grant an approval.

(c) The Department shall request that the responsible person modify the engineering design if the Department determines that the engineering design does not contain sufficient information necessary to ensure that the engineering design is consistent with the approved remedial alternative selected in the RAP and compliance with all federal, state, and local statutes, regulations, and ordinances. The Department shall identify in writing deficiencies that must be addressed in the engineering design. A responsible person shall not implement the response action until the responsible person has made the modifications to the engineering design required by the Department.

(d) The Department shall not approve an engineering design if the Department determines that the engineering design is inconsistent with the selected remedial alternative outlined in the approved RAP.

(e) Any responsible person whose engineering design has been disapproved may request a meeting with the Department to discuss the reasons for the disapproval.

NOTE: Authority cited: Stats. 1994, c. 435 (S.B. 923), Section 3. Reference: Sections 25398.14, Health and Safety Code.

HISTORY

1. New section filed 6—30—95 as an emergency; operative 6—30—95 (Register 95, No. 26). A Certificate of Compliance must be transmitted to OAL by 12—27—95 or emergency language will be repealed by operation of law on the following day.

2. New section, including newly designated subsection (a)(2) and subsection renumbering, refiled 12—26—95 as an emergency; operative 12—26—95 (Register 95, No. 52). A Certificate of Compliance must be transmitted to OAL by 4—24—96 or emergency language will be repealed by operation of law on the following day.

3. New section refiled 4—24—96 as an emergency; operative 4—24—96 (Register 96, No. 17). A Certificate of Compliance must be transmitted to OAL by 8—22—96 or emergency language will be repealed by operation of law on the following day.

4. Repealed by operation of Government Code section 11346.1(g) (Register 96, No. 35).

5. New section filed 8—26—96 as an emergency; operative 8—26—96 (Register 96, No. 35). A Certificate of Compliance must be transmitted to OAL by 12—24—96 or emergency language will be repealed by operation of law on the following day.

6. Certificate of Compliance as to 8—26—96 order, including repealer and new section, transmitted to OAL 10—30—96 and filed 12—10—96 (Register 96, No. 50).

§67401.9. Orphan Share Determination.

The Department's recommendation as to whether a site should be selected for the Expedited Remedial Action Program shall include a determination of whether the site has an orphan share. For those sites already selected for the Expedited Remedial Action Program, the Department shall make a determination as to whether sites are an orphan share site within 30 days of the effective date of this regulation, unless that determination already has been made by the Department or the Site Designation Committee. No more than ten sites may be determined to have an orphan share.

NOTE: Authority cited: Stats. 1994, c. 435 (S.B. 923), Section 3. Reference: Sections 25396.5(b), Health and Safety Code.

HISTORY

1. New section filed 6—30—95 as an emergency; operative 6-30—95 (Register 95, No. 26). A Certificate of Compliance must be transmitted to OAL by 12—27—95 or emergency language will be repealed by operation of law on the following day.
2. New section refiled 12—26—95 as an emergency; operative 12—26—95 (Register 95, No. 52). A Certificate of Compliance must be transmitted to OAL by 4—24—96 or emergency language will be repealed by operation of law on the following day.
3. New section refiled 4—24—96 as an emergency; operative 4—24—96 (Register 96, No. 17). A Certificate of Compliance must be transmitted to OAL by 8—22—96 or emergency language will be repealed by operation of law on the following day.
4. Repealed by operation of Government Code section 11346.1(g) (Register 96, No. 35).
5. New section filed 8—26—96 as an emergency; operative 8—26—96 (Register 96, No. 35). A Certificate of Compliance must be transmitted to OAL by 12—24—96 or emergency language will be repealed by operation of law on the following day.
6. Certificate of Compliance as to 8—26—96 order, including repealer and new section, transmitted to OAL 10—30—96 and filed 12—10—96 (Register 96, No. 50).

§67401.10. Modification of Orphan Share Determination.

(a) At the time the Department proposes an apportionment of liability for response costs at a site, it may change its determination regarding whether a site has an orphan share under the following circumstances:

(1) The Site was determined to have an orphan share pursuant to Section 67401.9 and the Department finds that no orphan share actually exists.

(2) The Site was determined not to have an orphan share pursuant to Section 67401.9 and the Department makes the following findings:

[A] An orphan share actually exists;

[B] Not more than ten sites, for which response actions are being conducted pursuant to the Expedited Response Action Program, have been determined to have an orphan share pursuant to Section 67401.9; and

[C] There are funds available in the trust fund to cover all response costs that will be assigned to the orphan share after payment of any claims already received for response costs that have been allocated to an orphan share at other sites in the Expedited Remedial Action Program.

NOTE: Authority cited: Stats. 1994, c. 435 (S.B. 923), Section 3. Reference: Sections 25396(m), 25396.5(b) and 25398.8(a), Health and Safety Code.

HISTORY

1. New section filed 6—30—95 as an emergency; operative 6-30—95 (Register 95, No. 26). A Certificate of Compliance must be transmitted to OAL by 12—27—95 or emergency language will be repealed by operation of law on the following day.
2. New section refiled 12—26—95 as an emergency; operative 12—26—95 (Register 95, No. 52). A Certificate of Compliance must be transmitted to OAL by 4—24—96 or emergency language will be repealed by operation of law on the following day.
3. New section refiled 4—24—96 as an emergency; operative 4—24—96 (Register 96, No. 17). A Certificate of Compliance must be transmitted to OAL by 8—22—96 or emergency language will be repealed by operation of law on the following day.
4. Repealed by operation of Government Code section 11346.1(g) (Register 96, No. 35).
5. New section filed 8—26—96 as an emergency; operative 8—26—96 (Register 96, No. 35). A Certificate of Compliance must be transmitted to OAL by 12—24—96 or emergency language will be repealed by operation of law on the following day.
6. Certificate of Compliance as to 8—26—96 order, including repealer and new section, transmitted to OAL 10—30—96 and filed 12—10—96 (Register 96, No. 50).

§67401.11. Allocation of Orphan Share.

(a) The following factors shall be used by the Department to determine when a responsible person cannot be located or identified, or when a responsible person is considered insolvent. The factors that shall guide the Department in allocating response costs to an orphan share shall include, but are not limited to, the following:

(1) A responsible person cannot be located when the Department determines that the responsible person is deceased and there are no assets remaining in the estate of the deceased, and there is no successor in liability.

(2) A responsible person shall be considered insolvent if the Department makes a finding pursuant to H&SC Section 25396(j).

(b) When allocating response costs to an orphan share, the Department shall apply a community benefit factor in conjunction with the established equitable factors listed in H&SC Section 25398.8(c). The community benefit factor includes consideration of the following:

(1) The relative threat posed by the site to public health and the environment.

(2) The community benefit realized by members of the public and the affected community as a result of the implementation of the response action.

NOTE: Authority cited: Section 25396(m), Health and Safety Code; Stats. 1994, c. 435 (S.B. 923), Section 3. Reference: Sections 25396(m) and 25398.8(c), Health and Safety Code.

HISTORY

1. New section filed 6—30—95 as an emergency; operative 6-30—95 (Register 95, No. 26). A Certificate of Compliance must be transmitted to OAL by 12—27—95 or emergency language will be repealed by operation of law on the following day.
2. New section refiled 12—26—95 as an emergency; operative 12—26—95 (Register 95, No. 52). A Certificate of Compliance must be transmitted to OAL by 4—24—96 or emergency language will be repealed by operation of law on the following day.
3. New section refiled 4—24—96 as an emergency; operative 4—24—96 (Register 96, No. 17). A Certificate of Compliance must be transmitted to OAL by 8—22—96 or emergency language will be repealed by operation of law on the following day.
4. Repealed by operation of Government Code section 11346.1(g) (Register 96, No. 35).
5. New section filed 8—26—96 as an emergency; operative 8—26—96 (Register 96, No. 35). A Certificate of Compliance must be transmitted to OAL by 12—24—96 or emergency language will be repealed by operation of law on the following day.
6. Certificate of Compliance as to 8—26—96 order, including repealer and new section, transmitted to OAL 10—30—96 and filed 12—10—96 (Register 96, No. 50).

§67401.12. Procedures for Filing Claims Against the Expedited Site Remediation Trust Fund.

(a) Within 3 months after the Department has approved a request for a certificate of completion pursuant to H&SC Section 25398.15, responsible persons who entered into and are in compliance with an enforceable agreement with the Department pursuant to H&SC Section 25398.2(b)(1) may file a claim with the Department for reimbursement of the portion of the response action allocated to an orphan share pursuant to H&SC Section 25398.8. For purposes of this section, the Department will only accept one consolidated claim for a reimbursement of response costs allocated to an orphan share from responsible persons who have signed an enforceable agreement pursuant to H&SC Section 25398.2(b)(1). Responsible persons filing such a claim shall comply with the following claims procedures for reimbursement by the Expedited Site Remediation Trust Fund:

(1) The responsible person shall file a written claim with the Department. All claims must be filed with the Department by March 1 of each year to be considered for distribution of funds appropriated for that fiscal year.

(2) All claims filed by the responsible person shall include copies of the following: the enforceable agreement entered into pursuant to H&SC Section 25398.2(b)(1), the Department's apportionment of liability conducted pursuant to H&SC Section 25398.8, and an accounting of response costs defined in subdivision (t) of H&SC Section 25396 and Section 67401.2, and any other information requested by the Department deemed appropriate in determining the legitimacy of the claim.

NOTE: Authority cited: Sections 25298.8(b) and 25399.1, Health and Safety Code; Stats. 1994, c. 435 (S.B. 923), Section 3. Reference: Sections 25396(m), 25398.8(b) and 25399.1, Health and Safety Code.

HISTORY

1. New section and appendix filed 6—30—95 as an emergency; operative 6-30—95 (Register 95, No. 26). A Certificate of Compliance must be transmitted to OAL by 12—27—95 or emergency language will be repealed by operation of law on the following day.
2. New section and appendix refiled 12—26—95 as an emergency; operative 12—26—95 (Register 95, No. 52). A Certificate of Compliance must be transmitted to OAL by 4—24—96 or emergency language will be repealed by operation of law on the following day.
3. New section and appendix refiled 4—24—96 as an emergency; operative 4—24—96 (Register 96, No. 17). A Certificate of Compliance must be transmitted to OAL by 8—22—96 or emergency language will be repealed by operation of law on the following day.
4. New section and appendix repealed by operation of Government Code section 11346.1(g) (Register 96, No. 35).
5. New section and appendix filed 8—26—96 as an emergency; operative 8—26—96 (Register 96, No. 35). A Certificate of Compliance must be transmitted to OAL by 12—24—96 or emergency language will be repealed by operation of law on the following day.
6. Certificate of Compliance as to 8—26—96 order, including repealer and new section, transmitted to OAL 10—30—96 and filed 12—10—96 (Register 96, No. 50).

§67401.13. Distribution of Orphan Share.

(a) Distribution of funds from the Expedited Site Remediation Trust Fund will be conducted annually. The distribution will only occur to the extent funds are available in the Expedited Site Remediation Trust Fund to pay claims received for response costs that have been allocated to an orphan share.

(b) No orphan share funds for a site shall be disbursed until all Department response costs incurred for that site have been paid.

(c) If the total of all approved claims for response costs that have been allocated to an orphan share for a fiscal year does not exceed the amount available in the Expedited Site Remediation Trust Fund, then each claim shall be fully funded.

(d) If the total of all approved claims for response costs that have been allocated to an orphan share for a fiscal year exceeds the amount available in the Expedited Site Remediation Trust Fund, then each claim shall be paid in the following manner:

- (1) Payment of claims for those response costs that have been allocated to an orphan share shall be

prorated based on the total sum of all approved orphan share claims for that fiscal year, except that all claims for amounts under \$50,000.00 shall be paid in full, if there is a sufficient amount available in the Expedited Site Remediation Trust Fund.

(2) The balance of claims not fully paid in a fiscal year shall be carried over to subsequent fiscal years and either paid in full if funds are available in the Expedited Site Remediation Trust Fund, or prorated with claims from each year.

NOTE: Authority cited: Stats. 1994, c. 435 (S.B. 923), Section 3. Reference: Sections 25396(m), Health and Safety Code.

HISTORY

1. New section and repealer of appendix filed 12—10—96; operative 12—10—96 (Register 96, No. 50).

§67403. Monitoring and Inspection for Permitted Facilities.

NOTE: Authority cited: Section 208, Health and Safety Code. Reference: Sections 25159 and 25159.5, Health and Safety Code.

HISTORY

1. Repealer filed 5—24—91; effective 7—1—91 (Register 91, No. 22).

§67409. Closure and Post—Closure Care of Landfills at Permitted Facilities.

NOTE: Authority cited: Section 208, Health and Safety Code. Reference: Sections 25159, 25159.5 and 25245, Health and Safety Code.

HISTORY

1. Repealer filed 5—24—91; effective 7—1—91 (Register 91, No. 22).